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06-1010

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

1. PARTIES

A. Address

**THIS AGREEMENT FOR SOFTWARE LICENSES, IMPLEMENTATION AND MAINTENANCE SERVICES FOR AN AUTOMATED TIME AND ATTENDANCE SYSTEM** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **GHG CORPORATION**, ("Contractor"), a Texas corporation.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

| <u>City</u>  | <u>Contractor</u>  |
|--|--|
| Director, Public Works & Engineering<br>Department<br>City of Houston<br>P.O. Box 1562<br>Houston, Texas 77251 | GHG Corporation<br>1100 Hercules, Suite 290<br>Houston, TX 770558<br>Tel: (281) 488 - 8806 |

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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#### **EXHIBITS**

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- B-1. System Components Unit Prices & System Professional Services Hourly Rates
- C. MWBE Subcontract Terms
- D. Equal Employment Opportunity
- E. Drug Policy Compliance Agreement
- F. Drug Policy Compliance Declaration
- G. Certification of No Safety Impact Positions

#### **C. Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

#### **D. Controlling Parts**

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

**GHG CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

John Denny  
PRESIDENT

ATTEST/SEAL (if a corporation)

WITNESS (if not a corporation)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Donna Green  
Donna Green  
Controller

APPROVED:

Calvin Swales  
City Purchasing Agent

APPROVED AS TO FORM:

Mayra Ramona  
Assistant City Attorney

L.D. No. 0630600115001

**CITY OF HOUSTON, TEXAS**

Signed by:

By: \_\_\_\_\_

Mayor \_\_\_\_\_

Bill White  
Sanjay Datta

ATTEST/SEAL:

Anna Russell  
City Secretary

Michael S. Porter  
Director, Public Works & Engineering  
Department CD - IT

COUNTERSIGNED BY:

Annise D. Parker  
City Controller

DATE COUNTERSIGNED:

10-12-06

## **II. DEFINITIONS**

As used in this Agreement, the following terms have the meanings set out below:

"Acceptance" means approving the eTSMS software for use by City after testing the software to ascertain that the software works according to Contractor's Documentation as set out in Section IV (E) of this Agreement.

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" means the Purchasing Agent for the City of Houston, or the person he or she designates.

"City Sites" mean offices of the City of Houston Public Works and Engineering Department located at various addresses in the City of Houston as set out in Exhibit "A-2", "Proposed Electronic Time Clock Locations" and additional sites where the Director has the option to locate such time clocks under this Agreement.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Director of the City's Public Works and Engineering Department, or the person he or she designates.

"Documentation" means the manual provided by Contractor detailing eTSMS's design, operations and instructions for using the software to obtain the desired results from the software

system on which it is used.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"eTSMS" program means Contractor's TimeSheet Management Software program being licensed by City under this Agreement to run an automated time and attendance database for the Utility Maintenance Branch and the Right of Way Fleet Maintenance Division of the City's Public Works and Engineering Department.

"Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Project" means the custom-modification and implementation of Contractor's eTSMS program under this Agreement to run an automated time and attendance database for the City's Public Works and Engineering Department.

"System" means the custom-modified automated time and attendance program and database configured and delivered to City under this Agreement to meet the requirements of City RFP TC-6-0737-53-20308 and this Agreement.

### **III. DUTIES OF CONTRACTOR**

#### **A. Scope of Services**

(1) In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

(2) Contractor shall grant City a non-exclusive, non-transferrable perpetual license to use Contractor's eTSMS software program to run the City's automated time and attendance database. Under this license, City has the right to permit an unlimited number of City end-users to access the database.

(3) Contractor shall transfer to City title to all software developed for the City.

(4) Contractor shall transfer to City licenses obtained from third party software vendors for all third party software licenses purchased for the City for the Project.

(5) Contractor shall provide at least one complete copy of the most current version of the executable code and applicable documentation for all modules of the installed, modified, tested and Accepted eTSMS software program for this Project.

(6) City has the right to make one back up copy of the eTSMS software program.

(7) Upon Acceptance of the System at the Pilot Site by the Director, Contractor shall deposit the source codes of the Accepted custom-modified eTSMS software program in an escrow account under the terms of an escrow agreement which enrolls the City as a beneficiary with rights to access the source codes under the terms of the same escrow agreement. The Director and Contractor shall execute the escrow Agreement.

#### **B. Coordinate Performance**

\_\_\_\_\_ Contractor shall coordinate its performance with the Director and other persons that



the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

**C. Payment of Subcontractors**

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

**D. RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

**E. INDEMNIFICATION**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION,

**LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND  
TRADE SECRET INFRINGEMENT**

**CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.**

**WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND**

**CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

**G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY**

\_\_\_\_\_ **CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

**H. INDEMNIFICATION - PROCEDURES**

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written

notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

I. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:  
\$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:  
Statutory amount
- (3) Professional Liability  
\$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance  
\$1,000,000 combined single limit  
  
Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period  
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Purchasing Agent, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

J. Warranties

- (1) Contractor's performance shall conform to the professional standards prevailing in

Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

- (2) Software Warranty. Contractor warrants that the eTSMS software it provides under this Agreement will be free of any defects in workmanship or materials for a period starting from the date of Acceptance and one year thereafter.
- (3) Third Party Software Warranty. Contractor shall provide the City with warranties, if any, provided by the licensor of the Third Party Software licensed to City under this Agreement.
- (4) Third Party Hardware Warranty. Contractor shall provide the City with the warranties, if any, provided by the manufacturer of all Third Party Hardware purchased for the City under this Agreement. Contractor shall assist the City in any warranty claims against such manufacturers related to the hardware provided pursuant to such warranty terms during the term of this Agreement and the manufacturer's warranty period. Contractor shall also assist the City in coordinating with manufacturer's technical support to ensure that any replacement parts required for the repair of the hardware are obtained from the manufacturer during manufacturer's warranty period and the term of this Agreement.

K. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes

it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

L. Use of Work Products - City may use all documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

M. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

N. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

O. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "D".



P. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first

day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

Q. Minority and Women Business Enterprises

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 15% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if

directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in Exhibit "C". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

#### **IV. DUTIES OF THE CITY**

##### **A. Payment Terms**

- (1) Contractor warrants that it can provide all the services, the software licenses, the hardware, the two ERP interfaces, the training for City System Administrators and end-users and one year of technical support for the System set out in Exhibit "A", for \$165,000.00. City shall pay and Contractor shall accept payments under this Agreement in the manner set out below:

- (i) the actual cost of providing the software licenses, hardware, professional services and the cost of the two ERP interfaces as detailed in Exhibit "B" at the Initial Site upon Acceptance of the System at the Initial Site by the Director in the manner set out in Section IV (G). The total sum for providing the System at the Initial Site shall not exceed \$65,000.00.
- (ii) the actual cost of providing the software licenses, hardware, and professional services to set up the System at six other sites listed in Exhibit "A-1" in the order determined by the Director upon Acceptance of the System at each site in the manner set out in Section IV (G). Contractor shall provide one year of technical support and maintenance for the System in the manner set out in Exhibit "A" beginning the day the System is Accepted at the Initial Site. The

total sum for providing the System at the Initial Site, plus six other sites and one year of technical support and maintenance beginning the day the System is Accepted at the Initial Site shall not exceed \$165,000.00.

- (2) Subject to the allocation of funds as set out in Section IV (H) below, City shall pay and Contractor shall accept the annual maintenance fee of \$19,830.00 for each maintenance year set out in Exhibit "B" beginning the day after Contractor's one year of free maintenance from the date of Acceptance of the System at the Initial Site expires. The City is paying Contractor the annual maintenance fee in advance at the beginning of each year to lock in the rate for that year.

The City may audit all payments made to Contractor at a later date. Contractor shall refund any overpayments uncovered in the audit. If this Agreement is terminated before the end of a period for which payment has been made in advance, Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of the termination of this Agreement.

B. Addition of City Sites

\_\_\_\_\_ During the term of this Agreement, the Director has the option to request Contractor in writing to install the System at additional City Sites identified by the Director. In the event the Director requests Contractor in writing to install the System at additional City Sites not listed in Exhibit "A-2", "Proposed Electronic Time Clock Locations", then Contractor shall install the System at additional City Sites identified by the Director at the unit prices for System components and the hourly rates for System professional services set out in Exhibit "B-1" of this Agreement and at the

total cost for installing the System at each additional City Site negotiated by the Director and Contractor at the time the Director makes a written request to Contractor to install the System at additional City Sites. As of the effective date, the Systems installed at such additional City Sites shall be subject to this Agreement as if they had been a part, but fees for such additional Systems shall start to accrue only as of the effective date. Contractor's prices for the items listed in Exhibit "B-1", "System Components Unit Prices & System Professional Hourly Rates" are valid for five years from the date of Acceptance of the System at the Initial Site.

C. Deletion of City Sites

At any time during the term of this Agreement, the Director may notify Contractor in writing to delete certain City Sites listed in Exhibit "A-2", "Proposed Electronic Time Clock Locations" of this Agreement. On receiving such notice, Contractor shall delete the City Site from Exhibit "A-2", "Proposed Electronic Time Clock Locations". In the event Director notifies Contractor to delete a City Site at which Contractor has already begun installing the System in accordance with the Director's instructions, then, on receiving the notice, Contractor shall discontinue installing the System at the City Site deleted by the Director effective the day Contractor receives the notice or the date stated in the notice. After Contractor submits an invoice to the City for the installation or the partial installation of the System at that City Site prior to the date of the Director's notice, Contractor shall exclude all charges for the System deleted at that City Site by the Director from invoices submitted after such charges have been paid.

D. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any

of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

E. Method of Payment

\_\_\_\_\_ Upon Acceptance of the System at the Initial Site and upon subsequent Acceptance of the System at other Sites identified by the Director, Contractor shall submit invoices for the System to the Director at each location showing the unit prices for the components of the System and the hourly rates for professional services rendered to set up the System at that location as per the rates for such components and hourly rates for professional services set out in Exhibit "B-1". The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

F. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

G. Acceptance of the System

Beginning promptly after Contractor has installed the System at the Initial Site or any other Site identified by the Director as set out in Exhibit "A" and Section IV, B, the City shall operate the System for a 30-day Trial Period, with Contractor providing Support Services.

If during the Trial Period, the tests the City conducts indicate that the System is not performing in accordance with Contractor's Documentation or the requirements of this Agreement, Contractor will have 30 days to correct the problem(s), at which time the City will have an additional

15 days to retest the corrections.

The City shall notify Contractor of any non-conformity between the operation of the System and Contractor's Documentation and provide documentation of the non-conformity to Contractor as soon as practicable after discovery.

The City shall accept the System when: (i) the System and related Documentation have been completely delivered and installed, and (ii) the System has, by the end of the 30-day Trial Period, successfully operated in accordance with Contractor's Documentation and the requirements of this Agreement. The City shall reject the System if at the end of the 30-day Trial Period (plus any time the City provides to Contractor to correct defects), the System has not performed in accordance with Contractor's Documentation and Contractor is unable to correct the deficiency.

If the City rejects the System, it will be returned to Contractor at no cost to the City and the City will not pay for the use of the System or any other applicable goods or services under this Agreement. Contractor shall return to the City all sums paid to it under this Agreement within 30 days of rejection of the System. The City reserves all other available rights at law or in equity.

H. Limit of Appropriation

\_\_\_\_\_(1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$244,820.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following

procedures and remedies.

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and, where in excess of the amount specified in Paragraph (4) below, approved by motion or ordinance of City Council in substantially the following form:

**"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

TO: [Name of Contractor]  
FROM: City of Houston, Texas (the "City")  
DATE: [Date of notice]  
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$\_\_\_\_\_, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$\_\_\_\_\_.

SIGNED:

(Signature of the City Controller)  
City Controller of the City

REQUESTED:

(Signature of the Director)  
Director

(4) City Council delegates to the Director the authority to approve up to \$155,120.00 in supplemental allocations for this Agreement without returning to Council.



(5) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

## **V. TERM AND TERMINATION**

### **A. Contract Term**

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement (the "Initial Term").

### **B. Renewals**

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the City Purchasing Agent shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

### **C. Termination for Convenience by City**

The City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are

chargeable to this Agreement. Contractor shall refund prorata advance technical support and maintenance fees paid for the period remaining after the termination of this Agreement in the manner set out in Section IV, E.

TERMINATION OF THIS AGREEMENT IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If default occurs, the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's

satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

## **VI. MISCELLANEOUS**

### **A. Independent Contractor**

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

### **B. Force Majeure**

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic

conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the City Purchasing Agent is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

\_\_\_\_ Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent and Director are only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Purchasing Agent, Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Purchasing Agent and Director are not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or

regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in

this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

R. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

S. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.



## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

1. Contractor warrants that Contractor's Time Sheet Management Software Solution (eTSMS) program with the technical features detailed below and in Exhibits "A-1", "A-2", "A-3", "A- 4", "A-5" and "A-6", proposed by Contractor in response to City's RFP TC-6-0737-53-20308, meets the City's requirements for a fully automated time and attendance system that:
  - a. provides centralized control of payroll for a multi-location City Department with seven remote sites located almost 30 miles apart;
  - b. can be programmed to provide restricted access of at least three levels, one level for Management, one for Supervisors and one for Employees;
  - c. records time via a biometric system that has dual verification, can be linked to existing computer network and has portable collection devices at multiple locations;
  - d. records time for multiple shifts including flex times and shifts of varying parameters;
  - e. has an automated employee files update feature;
  - f. allows supervisors and authorized clerical staff to update employee records from their own workstations by filling in various fields that have been assigned Codes listed in Exhibits "A-1" and "A-3" such as fields for vacation time, sick time and jury duty;
  - g. stores standardized work schedules for field, administrative, evening and night

shift employees;

- h. has standardized exception codes compatible with SAP R/3 and AHR ERP system codes;
- i. has field sizes that are compatible with SAP R/3 and AHR ERP system field sizes;
- j. allows time to be entered and stored in hours and minutes or only in minutes;
- k. is capable of storing data for review from previous pay periods in addition to data from the current pay period;
- l. is capable of distinguishing reporting times for hourly, part-time, salaried and executive personnel;
- m. is capable of recording the clocking in and out of employees at least six times during a work day;
- n. has a secure web-based (both Internet & Intranet) interface capability;
- o. will allow employees to report in and out at different locations;
- p. documents exceptions to general attendance criteria for employees;
- q. polls remote terminals & gathers data for payroll preparation;
- r. transfers attendance data to the City's central payroll processing system;
- s. allows information and reports to be used in conjunction with other programs such as Access, Oracle, Excel, Word, etc.; and
- t. would allow City to generate customized reports, such as:
  - i. a complete list of all employees in database;
  - ii. by any fields selected from all fields in the database;
  - iii. a listing of all employees present on premises selected;

- iv. an edit or exception report;
  - v. an error report, with missing punches, invalid employees, etc.
  - vi. approaching overtime report;
  - vii. scheduling coverage or pattern report;
  - viii. absentee report; and
  - ix. total time put in by all employees.
- u. meets the following technical requirements:
- i. operates on Windows 2000 or Windows XP operating system;
  - ii. uses a Windows 2003 or higher operating system on its server;
  - iii. transfers time and attendance information directly into City's central payroll computer for processing;
  - iv. a system that monitor's time spent by employee on various tasks;
  - v. system hardware is equipped for access control and attendance monitoring;
  - vi. a system that is capable of importing employee data from legacy system, accommodates no down or lost time and has ability to interconnect to a number of data collection terminals;
  - vii. transfers information grouped in three different ways into City ERP System to produce time sheets:
    - (1) Batch Line information produced by grouping similar documents containing total hours worked by a batch;
    - (2) Document Line information produced by grouping total hours entered on various lines of the document; and

- (3) Detail Line information produced by listing in detail all the work done an employee during a pay period by various fields.
  - viii. creates time sheets to be loaded on to the suspense file with three elements in the following order: (1) batch header first; (2) document header next; and (3) detail line third;
  - ix. enters detail line amounts in hours and minutes, eg. 3 hours and 30 minutes, not 3.5 hours;
  - x. displays batch and document totals as running totals, (eg. if one document total is 3 hours & 37 minutes and the second is 2 hours & 45 minutes, total should be displayed as 5.82, not 6 hours and 22 minutes);
  - xi. enters documents for the ERP system in batches of 15 documents each; and
  - xii. produces time sheets with information displayed in a layout similar to the one displayed in Exhibit "A- 4".
2. Contractor shall provide a two-way interface between the eTSMS System and the City's ERP Systems, viz. the AHR and SAP systems to enable City staff to fix entries manually in the eTSMS System in the event that entries sent to the ERP systems are rejected.

Project Manager

3. Contractor shall assign a Project Manager to work with the Director to implement the Project. Contractor's Project Manager shall be responsible for coordinating the training (described below) with the Director. Contractor's Project Manager shall also be the Director's contact person for troubleshooting and operational matters after the City Accepts the System.

## Training

4. In consultation with the Director, Contractor's Project Manager shall schedule training sessions as set out below:
  - i. one two-day session for System Administrators identified by the Director to undergo such training;
  - ii. the training session for System Administrators shall consist of hands-on training on setting up, maintaining and trouble shooting the System;
  - iii. three one-day sessions for City end-users identified by the Director as trainers for the City;
  - iv. the training session for the trainers shall consist of hands-on training on using the System.

Contractor shall provided a total of 40 hours of training in five days of training spread out over the five sessions detailed above.

## Technical Support and Maintenance

5. Contractor shall provide the City with technical support and maintenance for the City's time and attendance System and the eTSMS software licensed from Contractor, which shall include access to Contractor's trained and experienced technical support staff via:
  - i. Contractor's telephone number at 281-488-8806 to allow City System Administrators to call in with any functional and business logic errors they encounter while operating the System, Monday through Friday, 7:00 A.M. to 9:00 P.M., Central Time, excluding Contractor's holidays (Christmas and Thanksgiving Days); Saturdays and Sundays 10:00 A.M. to 6:00 P.M. Contractor shall have a

majority of support calls from City answered directly by a member of Contractor's technical staff. In the event a staff member is not available immediately, City System Administrators shall leave a message and Contractor's staff shall respond to such a message within one hour. (Contractor shall provide the Director with 30 days' prior written notice regarding a change in Contractor's number 281-488-8806).

- ii. Contractor's fax number at 281-488-1838 to allow City System Administrators fax supporting data to Contractor's technical support staff regarding problems encountered on the System;
- iii. Contractor's e-mail at [eems\\_support@ghg.com](mailto:eems_support@ghg.com) , 24 hours a day, to enable City System Administrators to contact Contractor's technical support staff via e-mail about problems encountered with the System;
- iv. Contractor's help-desk at 281-488-8806, 24 hours a day, seven days a week (except Contractor's holidays on Christmas and Thanksgiving Days), to allow City System Administrators to contact Contractor's technical staff for help with problems encountered with the System; Contractor's help- desk operator direct such calls to Contractor's technical consultants and in the event a consultant is not available then to the voice mail box for the consultant to return such calls within one hour of receiving the same.

#### SEVERITY LEVELS

- v. In the table below (see next page), the City and Contractor have assigned the following Severity Levels to eTSMS software and System problems, the error

corrections to be provided by Contractor, and the response times within which Contractor shall respond with such error corrections.

- vi. The Severity Levels apply to eTSMS software errors, hardware errors and the System functional and business logic errors, all referred to as "System error" or "System errors".
- vii. Contractor shall investigate and correct System errors reported by City System Administrators either by phone, e-mail or by coming on-site to correct such errors.
- viii. When reporting a problem, City System Administrators shall assign a Severity Level to each error reported, either verbally while calling an error over the phone, or in writing, as applicable.

#### ESCALATION PROCEDURES

- ix. In the event the technical support staff member assigned by Contractor to handle a Severity Level One or Two error notified by a City System Administrator does not agree with the severity level assigned or is unable to resolve the error in the response time detailed in the table for Level One or Level Two errors, then Contractor's technical support staff member responding to such calls shall escalate the error to a Developer for resolution. In the event no resolution can be found by the Developer assigned to the call, then the Developer shall bring the error to the attention of the Project Manager. Contractor's Project Manager shall contact the Director and resolve the problem as mutually agreed to by the parties.

**EXHIBIT "A"**

| <b>SEVERITY LEVELS</b> | <b>DEFINITION OF ERROR</b>  | <b>TYPE OF ERROR CORRECTION TO BE PROVIDED</b> | <b>RESPONSE HANDLED BY</b> | <b>RESPONSE TIME</b> | <b>ERROR CORRECTION SHALL BE PROVIDED WITHIN TIME GIVEN BELOW</b>   |
|------------------------|---|--|----------------------------|----------------------|---|
| <b>Level One</b>       | Affects a single end-user, but system is operational                                | Configuration change for the end-user affected | Help desk                  | 2 Hours              | Error correction, i.e., configuration change for the affected end-user shall be provided within 2 hours                                   |
| <b>Level Two</b>       | Affects multiple end-users, but system is operational                               | Configuration change for affected end-users    | Help Desk                  | 2 hours              | Error correction, i.e., configuration change for the affected end-users shall be provided within 2 hours                                  |
| <b>Level Three</b>     | Affects the system's ability to function as intended for most, if not all end-users | Software Patch                                 | Developer                  | 1 Hour               | Error correction, i.e., software patch shall be provided within time mutually agreed to by the Director and Contractor's Project Manager. |



## EXHIBIT "A-1"

### TECHNICAL SPECIFICATIONS AND FEATURES OF THE SYSTEM

#### I. CPAY-BATH

|    |                      |             |
|----|----------------------|-------------|
| 10 | FILLER               | PIC X (04). |
| 10 | BATH-NUMBER          | PIC X (06). |
| 10 | BATCH-ORG 1          | PIC X (03). |
| 10 | BATCH-TYPE           | PIC X (04). |
| 10 | BATCH-TOTAL          | PIC X (10). |
| 10 | COMPUTED-BATCH-TOTAL | PIC X (10). |

#### II. CPAY-DOCH

|    |                          |             |
|----|--------------------------|-------------|
| 10 | EMPLOYEE - ID            |             |
| 15 | EMPLOYEE - ID - 1-3      | PIC X (03). |
| 15 | EMPLOYEE - ID - 4-5      | PIC X (02). |
| 15 | EMPLOYEE - ID - 6-10     | PIC X (05). |
| 10 | APPOINTMENT - ID         | PIC X (01). |
| 10 | DOCUMENT - NUMBER        | PIC X (12). |
| 10 | DOCUMENT - ORG 1         | PIC X (03). |
| 10 | DOCUMENT - TYPE          | PIC X (04). |
| 10 | EMPL - CONCAT - NM       | PIC X (36). |
| 10 | INPUT - TOTAL            | PIC X (10). |
| 10 | COMPUTED - INPUT - TOTAL | PIC X (10). |
| 10 | HD - SUPPLEMENTAL - ID   | PIC X (1).  |
| 10 | PAY - LOCATION - CD      | PIC X (6).  |
| 10 | PAY - PERIOD - END - DT  |             |
| 12 | PAY - PERIOD - END - CY  | PIC X (2).  |
| 12 | PAY - PERIOD - END - YR  | PIC X (2).  |
| 12 | PAY - PERIOD - END - MO  | PIC X (2).  |
| 12 | PAY - PERIOD - END - DA  | PIC X (2).  |

#### III. CPAY - DOCD

|    |                  |             |
|----|------------------|-------------|
| 10 | EVNT - DT        |             |
| 15 | EVNT - YR        | PIC X (02). |
| 15 | EVNT - MO        | PIC X (02). |
| 15 | EVNT - DA        | PIC X (02). |
| 10 | EVNT - TYPE - CD | PIC X (05). |
| 10 | INPUT - AM       | PIC X (08). |
| 10 | TITLE - CD       | PIC X (06). |
| 10 | SUB - TITLE - CD | PIC X (02). |

|    |                      |             |
|----|----------------------|-------------|
| 10 | PAY - RATE - AM      | PIC X (08). |
| 10 | MINIMUM - HOURS - AM | PIC X (07). |

#### IV. CPAY - DOCD (CONT'D)

|    |                                 |             |
|----|---------------------------------|-------------|
| 10 | REDUCE - BASE - PAY - TYPE - FL | PIC X (01). |
| 10 | LABR - DIST - PROF - CD         | PIC X (05). |
| 10 | LABR - DIST - PROF - FL         | PIC X (01). |
| 10 | FUND - CD                       | PIC X (04). |
| 10 | AGENCT - CD                     | PIC X (03). |
| 10 | ORG - CD                        | PIC X (04). |
| 10 | SUBORG - CD                     | PIC X (02). |
| 10 | POSITION - ID                   | PIC X (07). |

- The **CPAY BATCH FILLER** identifies the type of record - B for batch header record, D for document header record and L for detail line record.
- The **BATCH NUMBER** can be any number that identifies the batch - usually a sequential number.
- The **BATCH ORG1** is the department number.
- The **BATCH TYPE** identifies the type of document and will always be "CPAY".
- The **BATCH TOTAL** is a hash total of all the detail lines in the batch. All time on the detail lines is entered in hours and minutes in AHR and/or SAP R/3 ® (ERP-Enterprise Resource Planning Systems), but the Batch Total ignores such protocol and just adds the total of all amount entries.
- The **COMPUTED BATCH TOTAL** is system generated and should be zero filled.

The batch number, department number and document type must appear on all records in the batch - even the document header record and the detail line records.

- The **EMPLOYEE ID** is the City-issued six-digit employee ID.
- The **APPOINTMENT ID** is not used at the City of Houston and should be left blank.
- The **DOCUMENT NUMBER** can be any number that identifies the document - usually a sequential number.
- The **DOCUMENT ORG1** is the department number.
- The **DOCUMENT TYPE** identifies the type of document and will always be "CPAY".
- The **EMPL CONCAT NM** is the employee's name, concatenated last name, and first name.
- The **INPUT TOTAL** is a hash total of all detail lines in the document. All time on the detail lines is entered in hours and minutes in AHR and/or SAP R/3 ® ERP Systems, but this total ignores the same and is just a mechanical total of all amounts entered into the machine.
- The **COMPUTED INPUT TOTAL** is system generated and should be zero filled.
- Leave the remaining fields of the **CPAY DOCH** blank.

The document number, department number and document type must appear on the document header recorded as well as all the detail line records in the document.

- The **EVNT DT** is the date at the time of entry/departure - entered in **YYMMDD** format.

- The **EVNT CD TYPE** is the pay per leave event for that date.
- The **INPUT AM** is the amount of time for that particular event. This is entered as hours and minutes, separated by a decimal.
- The remaining fields of the detail line record should be blank.

**V. FOLLOWING IS AN EXAMPLE OF WHAT THE RESULTING FILE SHOULD LOOK LIKE:**

|          |              |                      |                                 |
|----------|--------------|----------------------|---------------------------------|
| B CPAY20 | B65534       |                      |                                 |
| D CPAY20 | B65534CPAY20 | B0000066463099999    | B0000006646320 CPAYSMITH,JOHN   |
| L CPAY20 | B65534CPAY20 | B000000664639902071A | 8.00                            |
| L CPAY20 | B65534CPAY20 | B000000664639902081A | 8.00                            |
| L CPAY20 | B65534CPAY20 | B000000664639902091A | 8.00                            |
| L CPAY20 | B65534CPAY20 | B000000664639902101A | 8.00                            |
| L CPAY20 | B65534CPAY20 | B000000664639902111A | 8.00                            |
| B CPAY20 | B65535       | 65535 20 CPAY        | 15.76 0000000000                |
| D CPAY20 | B65535CPAY20 | B00000066464033099   | B0000006646420 CPAYJONES,GEORGE |
| L CPAY20 | B65535CPAY20 | B0000006646990211SW  | 1.59                            |
| L CPAY20 | B65535CPAY20 | B0000006646990212SW  | 14.17                           |

**VI. Additional information on the fields in the time sheet document layout is as follows:**

The **DOCUMENT-RECORD-TYPE-ID** has a value of:

**B = Batch Lines**

**D = Document Lines**

**L = Detail Lines**

- The batch line has data in only the first five common data fields, along with the appropriate data area information. Document lines and detail lines have data in all the common data fields along with their appropriate data areas.
- The **BATCH-DOCUMENT-CD** is "CPAY" for current pay period time sheets (or "PPAY" for prior pay period time sheets), the **BATCH-AGENCY-CD** is the Department number followed by two spaces, and the **BATCH-NO** is a unique identifier with up to six characters. These three elements of information will be the same for all times in the batch of documents, i.e., the document lines for each document in the batch, and all the detail lines in each document in the batch.
- The **DOCUMENT-CD** is "CPAY" for current pay period time sheets (or "PPAY" for prior pay period time sheets), the **AGENCY-CD** is the Department number followed by two spaces, and the **DOCUMENT-NO** is a unique identifier of up to twelve characters. These three elements of information are the same for all the detail lines in the document.
- The remaining **DATA-AREA** sections of each line are completed using the

appropriate layout depending on whether the line is a batch line, document line or detail line.

- e. The only accounting overrides that are allowed on either the **CPAY** or **PPAY** document are Job and Activity. These accounting overrides apply when looking at the time sheet layouts and when creating the document files. The remaining unused fields in an alphanumeric time sheet layout must be spaces; the remaining unused fields in a numeric time sheet layout must be zeroes.
- f. In addition, four digit codes may be added to the accounting details in order to identify labor hours expended for various functions.

**VII.** Additional information on the fields in the time sheet document layouts can be found in the Exhibits in the pages below.

**EXHIBIT "A-2"****PROPOSED ELECTRONIC TIME CLOCK LOCATIONS**

| <b>FACILITY<br/>NAME</b>  | <b>FACILITY<br/>ADDRESS</b> | <b>KEY<br/>MAP</b> | <b>KEY MAP<br/>AREA</b> | <b>PHONE<br/>NUMBER</b> | <b># OF<br/>CLOCKS</b> |
|---------------------------|-----------------------------|--------------------|-------------------------|-------------------------|------------------------|
| <b>Northeast Quadrant</b> | <b>718 E. Burress</b>       | <b>453-E</b>       | <b>NE</b>               |                         | <b>3</b>               |
| <b>Southeast Quadrant</b> | <b>2700 Dalton</b>          | <b>535-K</b>       | <b>SE</b>               |                         | <b>3</b>               |
| <b>Stoppage Teams</b>     | <b>100 Japhet</b>           | <b>494-L</b>       | <b>NE</b>               |                         | <b>3</b>               |
| <b>Southwest Quadrant</b> | <b>7101 Renwick</b>         | <b>531-F</b>       | <b>SW</b>               |                         | <b>3</b>               |
| <b>Northwest Quadrant</b> | <b>5900 Teague</b>          | <b>450-A</b>       | <b>NW</b>               |                         | <b>3</b>               |
| <b>Mc Carty</b>           | <b>5500 Mc Carty</b>        | <b>455-U</b>       | <b>NE</b>               |                         | <b>3</b>               |
| <b>Crosstimbers</b>       | <b>1700 E. Crosstimbers</b> | <b>453-M</b>       | <b>N</b>                |                         | <b>3</b>               |

**EXHIBIT "A-3"****TIME SHEET CODES FOR AHRS SYSTEM**

| <b>TIME SHEET CODES FOR AHRS ERP SYSTEM</b> |   |
|---|---|
| <b>AL</b>                                   | Hours Reduction   |
| <b>AW</b>                                   | Dock (Active Employee Exception Pay)                            |
| <b>B</b>                                    | Base Pay  |
| <b>CB</b>                                   | City Business   |
| <b>CT</b>                                   | Comp Time Used  |
| <b>D</b>                                    | Day Shift   |
| <b>DF</b>                                   | Death in Family   |
| <b>DH</b>                                   | Deferred Holiday Used   |
| <b>DS</b>                                   | Donated Sick Time Used  |
| <b>DSICK</b>                                | Donated Sick Pay Request  |
| <b>DSKFL</b>                                | Family Leave Donated sick                                       |
| <b>EH</b>                                   | Emergency Holiday Premium Pay                                   |
| <b>ES</b>                                   | Evening Shift   |
| <b>EW</b>                                   | Emergency Hours Add'l to Schedule                               |
| <b>FH</b>                                   | Floating Holiday Request  |
| <b>H</b>                                    | Scheduled Holiday Taken (Generated for Exception Pay employees) |
| <b>HA</b>                                   | Holiday Accrued (Deferred for Later Use by DH)                  |
| <b>HPOFF</b>                                | Holiday Premium Day Off   |
| <b>IA</b>                                   | Inactive Hours Reductions                                       |
| <b>ID</b>                                   | Injury Dock/Pay Reductions                                      |
| <b>IL</b>                                   | Injury Leave Hours Requested                                    |
| <b>J</b>                                    | Jury Duty   |
| <b>ML</b>                                   | Military Leave Request  |
| <b>NS</b>                                   | Night Shift   |
| <b>OT</b>                                   | Prior Period Time Entitled to Overtime Premium (PPAY Only)      |

| <b>TIME SHEET CODES FOR AHRS ERP SYSTEM</b> |  |
|---|--|
| <b>OW</b>                                   | Comp Time Hours Earned                 |
| <b>P</b>                                    | Personal Hours Requested               |
| <b>PFL</b>                                  | Family Leave Personal Leave            |
| <b>PL</b>                                   | Personal Time Used                     |
| <b>RD</b>                                   | Relieve of Duty                        |
| <b>SCADJ</b>                                | Salary Continuation Adjustment To Rate |
| <b>SFL</b>                                  | Family Leave Sick                      |
| <b>SH</b>                                   | Scheduled Holiday Premium Pay          |
| <b>SW</b>                                   | Scheduled Hours Add'l To Schedule      |
| <b>THOME</b>                                | Take Home Vehicle Use (Trips)          |
| <b>UFL</b>                                  | Unpaid Family Leave                    |
| <b>V</b>                                    | Vacation                               |
| <b>VFL</b>                                  | Family Leave Vacation                  |
| <b>W</b>                                    | Wellness                               |
| <b>WM</b>                                   | Wellness (MSP)                         |

**NOTE: THIS IS A SAMPLE LISTING OF MAJOR CODES CURRENTLY IN USE**

## SAMPLE TIME SHEET CURRENTLY IN USE

Dept. \_\_\_\_\_ Location \_\_\_\_\_ Week Ending \_\_\_\_\_ Input Total \_\_\_\_\_

[illegible]

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Entered By: \_\_\_\_\_ Date: \_\_\_\_\_



## GHS CURRENT / PRIOR PERIOD MUNICIPAL EXCEPTION TIME SHEET

Dept. \_\_\_\_\_ Location \_\_\_\_\_ Week Ending \_\_\_\_\_ Input Total \_\_\_\_\_

[illegible]

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Entered By: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT "A-5"**

**AHRS ERP CHECK SCREEN CURRENTLY IN USE**

**MODE: R      SCREEN: CHCK      USERID: E059      TR#: 11/15/05 03:53:39 PM**

**CHECK DISPOSITION**

**EMPLOYEE ID: 123 45 6      NAME: DOE, JOHN W**

**CHECK ISSUE DATE: 11 18 05**

**APPT ID / COMBINED CHECK FL: N**

**FINANCIAL INSTITUTION ACCOUNT CODE: 08**

**CHECK NUMBER: 99910004309730**

**CHECK STATUS: C**

**REPLACE CHECK:**

**CHECK AMOUNT: 1,117.91**

**IMMEDIATE BALANCE UPDATE:**

EXHIBIT "A-6"

AHRS PAYROLL CHECK STATUS SCREEN CURRENTLY IN USE

MODE: R SCREEN: QCHK USERID: E059 11/15/05 04:11:49 PM

PAYROLL CHECK STATUS INQUIRY

EMPLOYEE ID: 123 45 6 NAME: DOE, JOHN W  
CHECK: 99910004309730 HR BANK ACCOUNT: 08 CHASE BANK PAYROLL NO: 00020

DATE: 11 18 05 STATUS: C CLEARED AS OF: 11 13 05 CMB CHK FL: N

TOTAL PAY: 1,606.59 TOTAL DED: 488.68 NET: 1,117.91

FICA WAGE: 1,503.90 FRINGE BEN: 736.57 REIMBURSABLE: 0.00

| AP      | EVENT | INPUT    | DOLLAR    |          | LINE/ DT     |            |    |
|---------|-------|----------|-----------|----------|--------------|------------|----|
| ID TYPE | PLAN  | DATE     | AMOUNT    | AMOUNT   | DOCUMENT ID  | SUBLINE TP |    |
| -----   |       |          |           |          |              |            |    |
| B       |       | 11 11 05 | 80:00     | 1,590.59 | 000180902185 |            |    |
| LONG    |       | 11 11 05 | 80:00     | 16.00    | 000180902186 |            |    |
| DMOB    | EMP2  | 11 18 05 | DEDUCTION | 14.67    | 000180902199 | 0000       | 00 |
| FEDTX   | FEDTX | 11 18 05 | DEDUCTION | 130.25   | 000180902207 | 0000       | 00 |
| FICAE   | EMPEE | 11 18 05 | DEDUCTION | 93.24    | 000180902202 | 0000       | 00 |
| HMOBS   | EMP2  | 11 18 05 | DEDUCTION | 88.02    | 000180902196 | 0000       | 00 |
| MCATB   | PLANA | 11 18 05 | DEDUCTION | 60.36    | 000180902206 | 0000       | 00 |
| MEDIE   | EMPEE | 11 18 05 | DEDUCTION | 21.81    | 000180902205 | 0000       | 00 |
| MPENE   | MUNGE | 11 18 05 | DEDUCTION | 80.33    | 000180902193 | 0000       | 00 |

## **EXHIBIT "B"**

### **eTSMS PROJECT IMPLEMENTATION PLAN AND PAYMENT SCHEDULE**

| <b>PHASE</b>   | <b>DESCRIPTION OF WORK DONE DURING PHASE</b>  | <b>PAYMENT</b> |
|--|---|----------------|
| Phase I  | - Upon receiving the Notice to Proceed from City<br><br>Purchasing Agent, Contractor shall install the Biometric Readers, get both the Windows based SQL 2000 database and secure web-enabled servers up and running at 7101 Renwick site (Southwest Quadrant) set out in Exhibit "A-1".<br><br>This site shall be termed the "Initial Site". | See IV (A)     |
| Phase II   | - At the Initial Site, install custom interface to financial/accounting ERP systems, both AHR and SAP-R/3. Produce all reports specified by the Director.   |                |
| Phase III  | - Test the System installed at the Initial Site in accordance with Section IV (E) of this Agreement.  |                |
| Phase IV   | - Upon Acceptance of the System at the Initial Site by the Director, then Contractor shall, in consultation with Director, schedule installation, testing and Acceptance of the System at the other sites listed in Exhibit "A-1".  |                |
| Technical Support and Annual Maintenance Fee for the System: |   |                |
| Year One -   | Beginning the day the System is Accepted at the Initial Site and for one year thereafter  | Free           |
| Year Two -   | Subject to the allocation of funds and effective the day after Contractor's one year free technical support expires   | \$19,830.00    |

|                   |  |             |
|-------------------|--|-------------|
| Year Three -      | Subject to the allocation of funds and effective the day<br>after Contractor's second year of technical support expires  | \$19,830.00 |
| Option Year -     | Subject to the allocation of funds and in the event the<br>City exercises its option to renew this Agreement for<br>one additional one-year term, effective the day after<br>Contractor's second year of technical support expires       | \$19,830.00 |
| Option Year Two - | Subject to the allocation of funds and in the event the<br>City exercises its option to renew this Agreement for<br>the second additional one-year term, effective the day<br>after Contractor's third year of technical support expires | \$19,830.00 |

**EXHIBIT "B-1"**

**SYSTEM COMPONENTS UNIT PRICES & SYSTEM PROFESSIONAL SERVICES HOURLY RATES**

| ITEM NO.   | QTY. | DESCRIPTION   | UNIT PRICE    |
|--|------|---|---------------|
| <b>System Hardware Price:</b>                          |      |   |               |
| SRV01  |      | System Server - Dell Server with Single CPU, w/2 Gigabytes of Memory, and 120 Gigabyte HD | \$ 2,500.00   |
| HP 3000e   | 21   | RSI HandPunch 3000e - w/access control option, and battery backup                         | \$ 2,300.00   |
| CMI Genus I  |      | CMI Genus I - w/card reader   | \$ 1,300.00   |
| BioClock III   |      | BioClock III - w/Biometric reader   | \$ 995.00     |
| <b>System Software Price:</b>                          |      |   |               |
| WS2000   |      | Windows Server 2000   | \$ 500.00     |
| SQL2000  |      | SQL Server 2000   | \$ 2,000.00   |
| <b>Time and Attendance Application Software Price:</b> |      |   |               |
| eTSMS - 2000   |      | eTSMS - 2000 user license   | \$ 15,000.00  |
| eTSMS - 10   |      | eTSMS - 10 user increments  | \$ 500.00     |
| eTSMS - 100  |      | eTSMS - 100 user increments   | \$ 2,000.00   |
| eTSMS - 1000   |      | eTSMS - 1000 user increments  | \$ 7,500.00   |
| eTSMS - Unlimited                                      | 1    | eTSMS - Unlimited user increments   | \$ 7 5,000.00 |
| <b>Hourly Rates for Project Management / Training</b>  |      |   |               |
| PM   | 80   | Project Management on-site hourly rate  | \$ 70.00      |
| Training   | 40   | Training Hourly Rate Price: *This includes lodging and travel                             | \$ 65.00      |
| <b>Optional Items:</b>                                 |      |   |               |
| TimeClock Inst.  |      | Time Clock Installation (per clock)   | \$ 200.00     |
| Training - Add   |      | Additional Training (hourly rate)   | \$ 65.00      |
| eTSMS - Mod  | 200  | Application Software Modification (hourly rate)   | \$ 70.00      |

**EXHIBIT "C"**  
**MWBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within five business days of execution of this subcontract, Engineer (prime engineer) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
  - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

## **EXHIBIT "D"**

### **EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.



**EXHIBIT "E"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)

\_\_\_\_\_  
(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "F"**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)

\_\_\_\_\_  
(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

\_\_\_\_\_  
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

\_\_\_\_\_  
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

\_\_\_\_\_  
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

\_\_\_\_\_  
Initials From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred  
(Start date) (End date)

|                            | Random | Reasonable<br>Suspicion | Post<br>Accident | Total |
|----------------------------|--------|-------------------------|------------------|-------|
| Number Employees Tested    | _____  | _____                   | _____            | _____ |
| Number Employees Positive  | _____  | _____                   | _____            | _____ |
| Percent Employees Positive | _____  | _____                   | _____            | _____ |

\_\_\_\_\_  
Initials      Any employee who tested positive was immediately removed from the City  
worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_  
Initials      I affirm that falsification or failure to submit this declaration timely in  
accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration  
are within my personal knowledge and are true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "G"**

**CONTRACTOR'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing \_\_\_\_\_  
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)